

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**NICK JAMES GONZALES,**

**Plaintiff,**

**v.**

**No. 1:18-cv-00453**

**CENTURION HEALTH CARE PROVIDERS  
OF NORTHEASTERN N.M. DETENTION FACILITY  
M. PAQUIN PHYSICIAN'S ASSISTANT, MR. FARNUM  
MEDICAL SERVICES ADMINISTRATOR, N.E.M.D.F.  
GRIEVANCE MANAGER, and ATTORNEY GENERAL,**

**Defendants.**

**NOTICE OF REMOVAL OF CIVIL ACTION**

COME NOW Centurion Correctional Healthcare of New Mexico, misidentified in the Caption as "Centurion Health Care Providers of Northeastern N.M. Detention Facility," Michelle Paquin, misidentified in the Caption as "M. Paquin Physician's Assistant," and Preston Farnum, misidentified in the Caption as "Mr. Farnum Medical Services Administrator," (collectively "Medical Defendants") through their attorneys, Park & Associates, LLC (Alfred A. Park and Lawrence M. Marcus), and submit this Notice of Removal of Civil Action pursuant to 28 U.S.C. § 1332. Medical Defendants state as follows in support of this Notice:

1. Pursuant to 28 U.S.C. § 1441, any civil action brought in a State Court of which the District Courts of the United States have original jurisdiction may be removed by the Defendant to the District Court of the United States for the district and division embracing the place where such action is pending.

2. A defendant wishing to remove an action to a federal District Court may remove the action within thirty (30) days of receipt, by service or otherwise, of the initial pleading. 28 U.S.C. § 1446 (b)(1).

3. On October 11, 2017, Plaintiff filed this action in the Eighth Judicial District Court, County of Union, State of New Mexico, as Case No. D-818-CV-2017-00088.

4. The summons was served on Centurion on April 18, 2018. This was the first receipt by Centurion of Plaintiff's Complaint.

5. Plaintiff's Complaint alleges each Defendant violated his Eighth and Fourteenth Amendment rights. Plaintiff further alleges the same actions also violated his rights under the New Mexico Constitution. *See* Plaintiff's Complaint (Tort), attached as **Exhibit A**.

6. This Removal is timely.

7. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331 as the Complaint alleges claims for violations of federal rights.

8. Specifically, Plaintiff alleges "Willful disregard to patients' rights and consequences" and "violation of statutes/and a constitution." Complaint, ¶(1)(a). In addition, Plaintiff cites Estelle v. Gamble, 429 U.S. 97, 104 (1976). This indicates that Plaintiff asserts claims under the Eighth and/or Fourteenth Amendment to the U.S. Constitution, raising a federal question.

9. The Court has jurisdiction over Plaintiff's additional claims pursuant to 28 U.S.C. §§ 1367 and 1441(c).

10. This Notice of Removal will be served on Plaintiff promptly after it is filed.

11. A Notice of Filing Removal, along with a true and correct copy of this Notice of Removal of Civil Action, will be filed with the Clerk of the Eighth Judicial District Court, County of Union, State of New Mexico, promptly after the filing of this Notice of Removal.

12. The individual identified in the Caption as “N.E.N.M.D.F. Grievance Manager,” James Beatty, has been served, and he consents to the removal of this action. A Consent to Removal will be filed by Mr. Beatty’s attorney shortly.

13. While the “attorney general,” presumably referring to the New Mexico State Attorney General, was listed in the Caption, he also was not identified by name. Moreover, the Complaint contains no allegations pertaining to him. Upon information and belief, he was only listed in the Complaint because of Plaintiff’s mistaken belief that he needed to comply with N.M.R.A. Rule 1-004(H)(1)(b), for service on an agency of the State. In any event, the “attorney general” is clearly a nominal party, whose consent is not required. *See, e.g., Kemp v. Hudgins*, 2013 WL 2631634 at \*4 (D. Kan. Unpublished Opinion June 12, 2013). *See also Bates v. Mortgage Electronic Registration System, Inc.*, 694 F. 3d 1076, 1080 (9<sup>th</sup> Cir. 2012); *Brazell v. Waite*, 525 Fed. Appx. 878, 880-881 (10<sup>th</sup> Cir. Unpublished Opinion June 4, 2013).

14. A Civil Cover Sheet is attached hereto as **Exhibit B**.

Respectfully submitted,

PARK & ASSOCIATES, LLC

/s/Lawrence M. Marcus  
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Lawrence M. Marcus  
Geoffrey D. White  
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I hereby certify a true and correct copy  
of the above pleading was served by U.S. Mail  
on this 14th day of May, 2018 to the following:

Nick Gonzales, # 48218  
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/s/Lawrence M. Marcus

Lawrence M. Marcus